

Internal Revenue Service

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X =

n =

Region =

Network =

Dear :

This letter responds to a letter dated May 26, 2009, requesting a ruling under § 4261 of the Internal Revenue Code.

The facts submitted state that X is a federally designated organ procurement organization (OPO) under 42 USC 273 and a § 501(c)(3) organization. X organizes the recovery, preservation, transportation and distribution of human organs and tissues for transplantation in the n states of Region. X works with numerous hospitals and transplant centers to coordinate organ transplants.

X responds to notifications from acute care hospitals in Region of recent or imminent deaths. Following this notification, X screens the potential donor and may send staff to the hospital to make a determination of the suitability of the donor's organs for transplant. When a potential donor is identified, X obtains the appropriate consent and takes responsibility for maintaining the donor body until the organs have been removed for transplant.

After X has made a determination that an organ is suitable for transplantation, the organ is matched with an appropriate recipient through a system maintained by Network. The donated organs may be matched with a recipient inside or outside of Region.

If an organ screened by X is matched with a recipient outside of Region, the OPO from the recipient's region will generally arrange to send a transplant team to the hospital where the donor is located to remove the organ and return it to the transplant center in its region for the recipient's transplant surgery. If an organ screened by X or another OPO is designated for a recipient within Region, X will arrange for a transplant team to travel to recover the organ and transport it to the transplant center within Region.

X assembles the transplant team and arranges for them to travel to the donor hospital to recover the organ. Once the organ has been recovered, it is preserved, packaged and transported with the transplant team to a transplant center in Region where the transplant surgery immediately commences. In most cases, the transplant team that recovers the organ includes the surgeon or surgeons who will perform the transplant surgery. X staff also travels with the transplant team to assist with the recovery, preservation, packaging and transportation of the organ.

Air travel is usually required to recover an organ and transport it to a transplant center. Flights must take place on very short notice at any time day or night, and are, therefore, unscheduled. The success of the surgery is dependent, in part, upon the speed at which the organ can be recovered and transported to the transplant site. To facilitate this process, X frequently charts fixed-wing aircraft having a maximum certificated takeoff weight in excess of 6,000 pounds from a charter operator. The charter operator either provides the flight directly or through a subcharter arrangement. The flight is solely used to transport the transplant team and X staff to the donor hospital and then transport them along with the recovered organ to a transplant center. Aircraft is equipped with the medical equipment necessary to transport the organ to the transplant site, such as specialized ice storage containers. In some instances, the flights may also be equipped with an "organ pump" in order to help maintain the function of the organ prior to transplantation.

X requests a ruling that its domestic charter flights to and from organ donation recovery sites constitute air transportation described in § 4261(g), and that any amount paid or received by X relating to such flights are exempt from the taxes imposed under §§ 4261 and 4271.

Section 4261(a) imposes a 7.5 percent tax on amounts paid for taxable transportation of any person. Taxable transportation is defined in § 4262(a)(1) to include transportation by air that begins and ends in the continental United States.

Section 4271(a) imposes a 6.25 percent tax on amounts paid for the taxable transportation of property. Such tax is imposed only on amounts paid to a person

engaged in the business of transporting property by air for hire. Taxable transportation is defined in § 4272 as transportation by air which begins and ends in the United States.

Section 4261(g) provides that no tax shall be imposed under §§ 4261 or 4271 on any air transportation for the purpose of providing emergency medical services— (1) by helicopter, or (2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

Section 4281 provides that no tax shall be imposed under §§ 4261 or 4271 on transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line.

Based on the facts submitted and representations made, we conclude that X's domestic charter flights to an organ recovery site and from a recovery site back to the transplant site that involve fixed-wing aircraft having a maximum certificated takeoff weight in excess of 6,000 pounds are equipped for and exclusively dedicated to acute care emergency medical services within the meaning of § 4261(g). Accordingly, no tax will be imposed under §§ 4261 or 4271 for such charter flights

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other provision of the Code.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to X's authorized representatives.

Sincerely,

Stephanie Bland
Senior Technician Reviewer, Branch 7
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

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